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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,867	12/17/2001	Thomas Joseph Kopacz	1443.009USJ	5354

7590 06/17/2004  
Schwegman, Lundberg, Woessner & Kluth, P.A.  
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EXAMINER

BOYD, JENNIFER A

ART UNIT PAPER NUMBER

1771

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

CF

**Office Action Summary**

Application No.

10/021,867

Applicant(s)

KOPACZ ET AL.

Examiner

Jennifer A Boyd

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 and 50-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 50-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 9/22/03 and 4/2/04
- 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed April 2, 2004, have been entered and have been carefully considered. Claims 1, 5, 16, 22 and 27 – 33 are amended, claims 50 – 59 are added and claims 1 – 33 and 50 – 59 are pending. In view of Applicant's Arguments, the Examiner withdraws the 35 U.S.C. 112, 1<sup>st</sup> paragraph rejection of claims 1 – 21 as found in paragraphs 5 and 6 of the Office Action dated January 30, 2004. In view of the Applicant's Amendments, the Examiner withdraws the 35 USC 102(e) rejection as being anticipated by Lange et al. (US 2002/0127937) as detailed in paragraphs 9 - 10 of the Office Action dated August 8, 2003. In view of Applicant's Amendments, the Examiner withdraws the 35 U.S.C. 103(a) as being unpatentable over Lange et al. (US 2002/0127937 A1) as detailed in paragraphs 11 – 12 of the Office Action dated August 8, 2003. Despite these advances, the invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 1 – 33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the Specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. The phrase “wherein the nonwoven laminate does not contain elastic materials or fibers between the at least two outer layers” as found in newly amended claims 1 and 5, the phrase “wherein the internally wire-tufted laminate does not contain elastic materials or fibers between the at least two outer layers” as found in newly amended claim 16 and the phrase “wherein the absorbent sheet does not contain elastic materials or fibers between the at least two outer layers” as found in newly amended claim 22 are considered to be new matter. It should be noted that in lines 17 – 20 of page 21 of the Specification the Applicant states that the “material of the present invention **does not require** the use of any type of elastic material or fibers”. The Applicant additionally notes that “elastic materials or fibers can be used in the present invention as desired”. The Applicant uses the phrase “does not **contain**” in claims 1, 5, 16 and 22; the word “contain” means that the nonwoven laminate cannot consist of any elastic materials or fibers. However, the Specification uses the phrase “does not **require**” which means that it is not a necessary element in the laminate but can be present. The Specification does not state an embodiment in which any elastic materials or fibers **must not** be present which is implied by “does not contain”. Therefore, it is the position of the Examiner that the term “does not contain” as stated in the newly amended claims is not equivalent to “does not require” as stated in the Applicant’s Specification.

#### ***Claim Rejections - 35 USC § 103***

5. Claims 50 – 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange et al. (US 2002/0127937 A1).

As to claims 50 and 54, Lange teaches a composite material, or “internally tufted laminate”, comprising at least one elastic layer including a non-woven layer and at least one gatherable layer joined at spaced apart locations to the elastic layer so that the gatherable layer is gathered between the spaced-apart locations (page 2, section [0025]). The Examiner equates the elastic layer to one of Applicant’s “non-woven layer” and the gatherable layer to Applicant’s “layer of tufted material”. It should be noted that the gatherable web can be made of a non-woven web made from spunbonding, bonded carding and meltblowing (pages 2 - 3, section [0026]) which would result in fiber protrusions, or “tufted” areas. It should be noted that the Applicant states in the Specification on page 14, lines 10 – 18 that the “tufts can be formed by a variety of methods, including, but not limited to, meltblown (polymer), cast film, spunbond, bonded-carded web, and so forth”. When the composite material is used as a wet-wipe, a soft elastic layer, or “non-woven layer”, is provided on both exposed surfaces of the wipe (page 5, section [0059]). Lange teaches that the composite material can additionally contain a liquid (page 4, section [0056]).

As to claims 58 and 59, Lange teaches that an *elastic fibrous web 12* and the *gatherable layers 24* and *28* can be bonded together using a smooth anvil roller and patterned calendar roller. Lange teaches that various bonding patterns can be used and the bonding points are preferably evenly distributed over the bonding area of the composite material (page 7, [0077]). Due to the patterned bonding, the projections will be shaped accordingly.

As to claims 50 – 57, Lange discloses the claimed invention except for that each tuft is a projection measuring at least 1 mm in length as required by claims 50 and 54, at least 2 mm in

Art Unit: 1771

length as required by claims 51 and 55, at least 3 mm in length as required by claims 52 and 56 and between 3 and 5 mm in length as required by claims 53 and 57. It should be noted that tuft length is a result effective variable. For example, as tuft length increases, the softness and bulkiness of the fabric increases. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create each tuft is a projection measuring at least 1 mm in length as required by claims 50 and 54, at least 2 mm in length as required by claims 51 and 55, at least 3 mm in length as required by claims 52 and 56 and between 3 and 5 mm in length as required by claims 53 and 57 since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have been motivated to optimize the bulkiness, softness and absorbency of the composite.

*Response to Arguments*

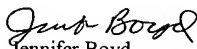
6. Applicant's arguments filed April 2, 2004 have been fully considered but they are not persuasive.

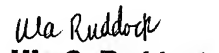
In response to Applicant's argument that Lange is not prior art with respect to the present application due to common ownership, the Examiner respectfully requests that the Applicant provide documentation to support common ownership by submitting a Declaration. Absent a Declaration, the Examiner will continue to consider Lange et al. (US 2002/0127937 A1) a valid prior art reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
June 3, 2004

  
**Ula C. Ruddock**  
Primary Examiner  
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